IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	**:**	
	:	**Criminal Action**
v.	**:**	
	:	**No. 05-195-1**
JOHN STEVENS	**:**	

MEMORANDUM AND ORDER

Schiller, J. **March 16, 2007**

Defendant John Stevens is charged with knowing possession of a firearm after having been convicted of a crime punishable by a term of imprisonment exceeding one year. *See* 18 U.S.C. § 922(g)(1) (2007). Presently before the Court is Defendant's motion to suppress the evidence seized pursuant to a warrantless search of his vehicle. For the reasons set forth below, the motion is granted.

I. BACKGROUND

On January 29, 2007, Defendant filed a motion to suppress the evidence obtained from a search of his car, arguing that the police lacked probable cause to search his vehicle or to arrest him. The Court held a suppression hearing on February 20, 2007; the sole witness was Officer Todd Lewis. Based on the submissions of the parties and the testimony presented at the hearing, the Court makes the following findings of fact.

II. FINDINGS OF FACT

At approximately 9:15 p.m. on January 17, 2004, Officers Lewis and DiBiasio of the Philadelphia Police Department received a police radio call reporting an armed African American

male at the intersection of 29th Street and Diamond Avenue in North Philadelphia. (Feb. 20, 2007 Tr. at 7.) The police drove to that intersection, and they were approached by a man who identified himself as Terrence Henderson. (*Id.* at 8.) Henderson told the officers that he and another man got into an altercation over a woman. (*Id.* at 8, 21.) As the conversation grew heated, according to Henderson, the other man pulled a handgun out of his pants, threatened Henderson, and then fled in a maroon Ford Taurus. (*Id.* at 8.) Henderson told the officers that he recognized the man from the neighborhood, but could not identify him by name. (*Id.* at 8, 36.) Henderson described the man as an African American, wearing all dark clothing. (*Id.* at 8.) Additionally, according to Henderson, the man lived at 2100 Marsden Street, which is approximately four blocks from the intersection of 29th Street and Diamond Avenue. (*Id.* at 24; Gov'ts Resp. to Def.'s Mot. to Suppress, Attachment A (Map).)

The police drove away but never reached 2100 Marsden Street. (Tr. at 9.) Just over one block away from where they were talking to Henderson, the police saw a maroon Mercury Sable parked on the 2100 block of Dover Street. (*Id.* at 9, 12) Despite the heavy snowfall outside, the car had no snow on the windows, and the snow was melting off the sides of the body. (*Id.*) This indicated to the officers that the car had been running for some time. (*Id.*) The officers put their flashers on and pulled up beside the Sable. (*Id.* at 27.) They then approached the car with guns drawn and ordered the driver out of the vehicle. (*Id.* at 9, 28.) The police did not see the driver make any gestures suggesting concealment of a weapon or make any attempt to evade the police. (*Id.* at 27.) The driver, now the Defendant in this case, got out of the car and identified himself to the police as Derek Stevens.[1] (*Id.*) Defendant is an African American male, and he was wearing

[1] Defendant, John Stevens, is also known as Derek Stevens.

dark clothing. (*Id.* at 10.) The officers patted down Defendant but found nothing on his person. (*Id.*)

At that point, the officers radioed the 22nd District Patrol Unit that was interviewing Henderson and requested that they escort Henderson to Dover Street so that he could identify Defendant. (*Id.* at 11.) After making the call, Officer Lewis searched the passenger compartment of the vehicle but found no contraband or weapons. (*Id.*) Then he searched the trunk of Defendant's car, where he identified a closed but unlocked toolbox. (*Id.*) Lewis opened the toolbox, removed a dirty rag that sat on top of the contents, and found a 9 millimeter semi-automatic pistol. (*Id.*)

After Officer Lewis searched the trunk, the 22nd District Unit carrying Henderson arrived.[2] (*Id.* at 11, 37.) Henderson then identified Defendant as the man with whom he had the altercation, and he identified the car as the vehicle in which Defendant had fled. (*Id.*)

III. CONCLUSIONS OF LAW

In a motion to suppress, the movant generally bears the burden of proving that evidence should be suppressed. *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995) (*citing United States v. Acosta*, 965 F.2d 1248, 1256 n.9 (3d Cir. 1992)). Once the defendant establishes that the police conducted a warrantless search, however, the burden shifts to the government to show that the search was reasonable. *Id.*

The Government argues that the search of Defendant's car was justified under the automobile exception to the warrant requirement. Defendant responds that, even assuming the exception

[2] At the hearing, Officer Lewis equivocated about exactly when Henderson arrived on the scene. (Tr. at 31-32.) The Court finds that Officer Lewis searched the trunk prior to Henderson's identification of Defendant as the man who threatened him with a gun.

applies, the police lacked probable cause to search his car.

A. The Automobile Exception to the Warrant Requirement

The Fourth Amendment protects individuals from "unreasonable searches and seizures." U.S. CONST. amend. IV. Subject to a few well-delineated exceptions, warrantless searches are per se unreasonable. *United States v. Ross* , 456 U.S. 798, 824-25 (1982). One such exception is the "automobile exception," which allows police officers "to seize and search an automobile without a warrant if probable cause exists to believe that [the vehicle] contains contraband." *United States v. Burton*, 288 F.3d 91, 100 (3d Cir. 2002) (internal citations omitted); *see also Carroll v. United States*, 267 U.S. 132 (1925) (recognizing the automobile exception). Moreover, "if probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle, and its contents that may conceal the object of the search." *Ross*, 456 U.S. at 825; *see also United States v. Schecter*, 717 F.2d 864, 865 (3d Cir. 1983) (police may search trunk under automobile exception). This principle has been extended to permit the search of any container located in a vehicle if the suspected contraband or evidence might be hidden within such a container. *Wyoming v. Houghton*, 526 U.S. 295, 301(1999)*; see also California v. Acevedo*, 500 U.S. 565 (1991).

B. The Police Did Not Have Probable Cause to Search Defendant's Trunk

Probable cause exists where "the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (citations omitted); *see also Illinois v. Gates*, 462 U.S. 213, 238 (1983) (If "there is a fair probability that contraband or evidence of a crime will be found in a particular place" police have probable cause to search that place.). Ordinarily, all searches must be based on probable cause to believe that a violation of law has occurred. *Couden v. Duffy*,

446 F.3d 483, 496 (3d Cir. 2006) (*citing New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985)). Probable cause requires something "less than certainty of proof" yet "more than suspicion or possibility," *United States ex rel Campbell v. Rundell*, 327 F.2d 153, 163 (3d Cir. 1964), and it should be assessed from the vantage point of an objectively reasonable officer, *Ornelas*, 517 U.S. at 695. The concept of probable cause is not capable of finite definition; rather it should be evaluated with reference to "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Gates*, 426 U.S. at 231.

The police plainly had reasonable suspicion sufficient to approach and temporarily detain Defendant; in other words, they were justified in conducting a brief investigatory stop because the officers had "a reasonable articulable suspicion that criminal activity [was] afoot." *See United States v. Goodrich*, 450 F.3d 552, 559 (*citing Terry v. Ohio*, 392 U.S. 1, 30 (1968), and *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)). The police had information from a victim suggesting that a man, who reasonably fit Defendant's description, committed a crime. Moreover, because the "articulable facts" may have led the police to believe that Defendant was in possession of a weapon, the police were justified in patting down Defendant as a matter of officer safety. *Terry*, 392 U.S. at 29-30 (police with reasonable grounds to believe suspect was armed and dangerous were justified in patting down suspect to discover weapons and quickly neutralize situation). Further, pursuant to *Terry*, the police were justified in approaching Defendant wth drawn guns , *see United States v. Edwards*, 53 F.3d 616, 619-20 (3d Cir. 1995), and they could have detained Defendant for a limited period of time, in order to effectuate the purpose of their stop, *United States v. Sharpe*, 470 U.S. 675, 685 (1985). *See also Florida v. Royer*, 460 U.S. 491, 500 (1983) (plurality opinion).

Nonetheless, while reasonable suspicion made the stop lawful and would have justified the

detention of Defendant for a short period of time before Henderson arrived, it did not justify the search of Defendant's trunk. The police needed probable cause to search the trunk of the vehicle. *See Burton*, 288 F.3d at 100. After patting down Defendant and finding no weapons, a reasonable and prudent officer would not have believed that probable cause existed to search Defendant's trunk. The police knew, however, that Henderson was to arrive momentarily; upon his arrival, the police would have known whether Defendant was Henderson's alleged assailant. Once Henderson identified Defendant, the police would have had probable cause to believe that Defendant's trunk contained a weapon, and the constitutional safeguards would have been fulfilled. However, the police failed to wait that short period for Henderson to arrive, a period which the law afforded them, and as such, they lacked probable cause to search the trunk. In this case, while the officers' instincts may have been correct, their judgment was not.

C. The Inevitable Discovery Doctrine Does Not Apply

The government raises the inevitable discovery doctrine as an additional reason to admit the evidence. "If the prosecution can establish by a preponderance of the evidence that [the items seized] ultimately or inevitably would have been discovered by lawful means . . . [then] the evidence should be received." *Nix v. Williams*, 467 U.S. 431, 442-43 (1984). "The rule, so applied, permits the court to balance the public interest in providing a jury with all relevant and probative evidence in a criminal proceeding against society's interest in deterring unlawful behavior." *United States v. Vasquez De Reyes*, 149 F.3d 192, 195 (3d Cir. 1998); *see also United States v. Scott*, 270 F.3d 30, 42 (1st Cir. 2004) (applying inevitable discovery doctrine where legal means are truly independent, inevitable, and where application will not provide incentive for police misconduct or significantly weaken Fourth Amendment protection).

The inevitable discovery doctrine does not apply in this case. Applying it in cases such as this would undermine the deterrence aspect of the exclusionary rule. The police officers should have known that probable cause did not exist to search the trunk. Moreover, they knew that a witness with the ability to establish (or undermine) the existence of probable cause would be arriving in a matter of moments. In a circumstance such as this, where it is obvious that probable cause is lacking and that the facts necessary to determine its existence, *vel non*, are imminently available, the only way to assure compliance with the probable cause requirement is to refuse to apply the inevitable discovery exception. In contrast to *Nix*, application of the inevitable discovery doctrine here would provide an incentive for police misconduct. *See, e.g., United States v. Haddox*, 239 F.3d 766, 768 (6th Cir. 2001) (citations omitted) (Applying the inevitable discovery doctrine to those instances where police had probable cause and could have obtained a warrant, but failed to do so, would obviate the warrant requirement altogether.); *United States v Reilly*, 224 F.3d 986, 994 (9th Cir. 2000) (citations omitted). In this case, the court finds that the public interest in deterrence far outweighs the interest in providing a jury with unlawfully-seized evidence. Patience is not only a virtue; here, it was a legal requirement. As such, the evidence seized from Defendant's car is suppressed.

IV. CONCLUSION

For the reasons stated above, the motion to suppress is granted, and the evidence seized from Defendant's car is inadmissible. An appropriate Order follows.

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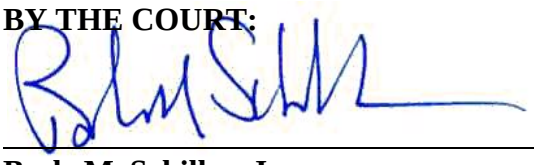
ORDER

AND NOW, this **16th** day of **March**, **2007**, upon consideration of Defendant's Motion to Suppress Evidence (Document No. 22), the Government's response, and for the foregoing reasons, it is hereby **ORDERED** that the motion is **GRANTED**.

BY THE COURT:



Berle M. Schiller, J.